



## Federal Regulators Disclose Non-Compliance of USPAP

*The Utah Division of Real Estate recently received a copy of a letter that Utah appraisers may find interesting. It is reprinted below.*

**Office of the Comptroller of the Currency  
Board of Governors of the Federal Reserve System**

**Federal Deposit Insurance Corporation  
Office of Thrift Supervision**

March 31, 2000

Mr. Kenneth J. Kaiser, Chariman  
Appraisal Standards Board of the Appraisal Foundation  
1029 Vermont Avenue, NW, Ste 900  
Washington D.C. 20005—3517

Dear Chairman Kaiser:

The federal financial institutions regulatory agencies request that the Appraisal Standards Board (ASB) reaffirm how an appraiser should apply the Uniform Standards of Professional Appraisal Practice (USPAP) to comply with the minimum appraisal standards in the agencies' appraisal regulations. In the course of examining depository institutions, examiners have found instances where appraisers are not following USPAP and the agencies minimum appraisal standards. Many of these instances have involved appraisals performed on commercial real estate and residential tract development properties.

To improve compliance with the agencies' regulations, it would be helpful if the ASB reaffirmed the procedures and practices appraisers should follow when appraising real estate for federally related transactions. Any guidance you provide in this regard the agencies would distribute to regulated institutions and our supervisory and examination staffs.

The agencies have compiled a detailed list (attached hereto) of concerns involving three general appraisal areas: USPAP compliance, appraiser independence, and appraisal review. Section A describes common areas of non-compliance with USPAP and the appraisal regulation. Section B describes

issues concerning appraiser independence. Section C describes appraisal review practices.

The agencies appreciate your attention to this matter. Staffs of the agencies are available to work with the ASB. We hope that if other USPAP related matters arise in the future, we may bring them to your attention so that we can continue to work together to promote sound appraisal practices.

### **A. Common areas of non-compliance with USPAP and the appraisal regulation.**

Examiners have reported that some appraisers are:

- Failing to identify and analyze all prior sales of the subject property (within required time frames), which may facilitate "land flip" deals.
- Using comparable sales transactions that are not arms length.
- Failing to analyze a current agreement of sale, option, or listing of the property being appraised.
- Failing to disclose known facts concerning the physical, legal, or economic characteristics of the property being appraised when using a hypothetical condition.
- Failing to indicate the "as is" value of the property as of the date of the report and how it differs from the value conclusion under a hypothetical condition.

*continued on page 2*

## Non-Compliance of USPAP

*continued from page 1*

- Misusing the departure rule by insufficiently supporting an opinion of value that results in a conclusion that is not credible.
- Failing to clearly identify and explain the reasons for the departure.
- Failing to obtain written concurrence from the client that there is agreement with the use of departure.
- Omitting an approach to value that typical practice and peers would require.
- Failing to adequately address real estate market risk.
- Reporting the sum of retail values of units for a tract development project (5 units or more in a single development) as representing the market value of the whole property.
- Using non-market based time constraints when applying deductions and discounts in the valuation of proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units. For example, some appraisers do not apply deductions and discounts if they believe the tract will sell within a year.
- Providing an undiscounted value conclusion to an institution when the institution is financing the development of the land and not the end purchase of the individual unit(s).
- Failing to report appropriate deductions and discounts for a tract development appraisal.

### B. Appraiser Independence

Bankers and examiners have reported that some appraisers are:

- Altering the title page, transmittal letter, or the identity of the intended user of an appraisal report to mislead the reader to believe the report was originally prepared for the lender and not the borrower.
- Failing to follow existing appraisal standards to disclose present or prospective relationships with borrowers.

### C. Appraisal Review

Examiners have reported some review appraisers are:

- Changing the market value opinion in the appraisal report without adequately supporting their opinion, thus producing a conclusion that is not credible.
- Failing to meet minimum USPAP reporting requirements for an institution that requires USPAP Standard Three reviews.

## Property Flipping and Appraisal Fraud

By Ossie Smith

Property flipping and appraisal fraud is becoming the focus of appraisal regulatory bodies nationwide. Not all real estate transactions where a real estate investor makes a profit are flips. A flip is a fraudulent real estate transaction where a property is bought and then resold at an exaggerated price.

The Appraiser Qualifications Board (AQB) of the Appraisal Foundation in Washington has recently sent a memo to all state appraisal boards. The AQB reports that property flipping and appraisal fraud is a growing trend and that the Appraisal Foundation has been contacted by numerous sources to report flipping activities. The AQB has requested that state appraisal boards complete and submit to the Appraisal Foundation a three-page form detailing information on the appraiser, the property, and the charges brought against the appraiser.



As an appraiser, you should know that any willing participation in flipping and appraisal fraud will not only put your appraisal license in jeopardy, but it could cause criminal charges to be brought against you. Also, there have been some reports of appraisers having their names, signatures, and seals (where applicable) used without their knowledge. In these cases, individuals have forged reports using appraisal software to make a very credible-looking report.

Finally, some appraisers are duped into participating in these schemes. The appraiser who cuts corners, ignores parts of USPAP, or tries to give the client a break is the one most likely to get stung. Appraisers are often duped when they accept appraisal assignments in a geographic area where they have not done the work necessary to become competent and knowledgeable in that region. Also, it is very important that an appraiser follow USPAP's requirements to analyze the sales history of a property and any pending sales contract.

*Reprinted with permission from the North Carolina APPRAISERREPORT, Volume 10, Number 2, Spring 2000*

## USPAP Q & A

*This communication by the Appraisal Standards Board (ASB) does not establish new standards or interpret existing standards. The ASB USPAP Q&A is issued to state and territory appraisal regulators to inform all states and territories of the ASB responses to questions raised by regulators and individuals; to illustrate the applicability of the Uniform Standards of Professional Appraisal Practice (USPAP) in specific situations; and to offer advice from the ASB for the resolution of appraisal issues and problems. The ASB USPAP Q&A do not constitute a legal opinion of the ASB.*

**Question:** What is Hypothetical Condition? Can you give me some examples that might apply in a real property appraisal?



**Answer:** A Hypothetical Condition is defined in USPAP as that which is contrary to what exists, but is supposed for the purpose of analysis.

**Comment:** *Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property or about conditions external to the property, such as market conditions or trends, or the integrity of data used in an analysis.*

Appraisers may need to use extraordinary assumptions of hypothetical conditions in performing an assignment. When used in an assignment they become part of the “givens” in an assignment and have a significant effect on the appraiser’s opinions and conclusions.

*The difference between whether a condition is an extraordinary assumption or is a hypothetical condition rests on what the appraiser knows about the condition in question.*

*If an appraiser cannot verify a certain condition that is critical to the valuation but which he believes is true and has no reason to doubt is true, then the condition is an extraordinary assumption and the appraiser must comply with appropriate*

*standards having to do with both the development and reporting of the condition.*

If, on the other hand, an appraiser is asked to use a condition which he knows to be false but which is necessary for the analysis, then two things are required: the appraiser can use the condition as long as it meets the criteria in USPAP and the appraiser must not confuse the information with the known facts.

The appraiser must clearly distinguish “false conditions” from the other assumptions or conditions which are believed or taken to be true. To properly distinguish these two, the false conditions are called hypothetical conditions. The best way to distinguish the two is to ask yourself whether the condition in question is known to be false. If, as of the date of value, the condition in question is known to be false, then it is a hypothetical condition. If, as of the date of value, the fact of the condition is unknown and it is reasonable to believe that the condition is true, then the condition is an extraordinary assumption.

Examples of Hypothetical Conditions that might be necessary in a real property appraisal assignment include:

1. Appraising proposed improvements such as new construction or additions, as of a current date.
2. Appraising a property as if it were free of any contamination when it is known to be contaminated.
3. Appraising a site as if sewer were available when the sewer is not available.
4. Appraising a site as if the zoning were changed.
5. Appraising irrigated farmland on the premise that the water supply is adequate for irrigated crop productions, knowing that the existing developed supply is not adequate.

These assumptions would be extraordinary if their use has a significant affect on the appraiser’s opinions and conclusions.

**Question:** How does an Extraordinary Assumption differ from a Hypothetical Condition? Can you give some examples that might apply in a real property appraisal?

*continued on page 4*

## USPAP Q&A

*continued from page 3*

**Answer:** An Extraordinary Assumption is defined in USPAP as an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions.

**Comment:** Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property or about conditions external to the property; such as market conditions or trends, or the integrity of data used in an analysis.

**Vol. 1, No. 7 – July 1999**

**Question:** The real property that I am appraising is in a market that was impacted by the major regional employer's closing of its facility three years ago. My client needs an opinion of value as of the date that preceded any knowledge of the facility being closed. Can't I include the fact that the facility closed in my retrospective appraisal?

**Answer:** A thorough review of Statement on Appraisal Standards No. 3 (SMT-3) is necessary to properly deal with the problem the appraiser faces in this question. The most relevant information in SMT-3 is:

*A retrospective appraisal is complicated by the fact that the appraiser already knows what occurred in the market after the effective date of the appraisal. Data subsequent to the effective date may be considered in developing a retrospective value as a confirmation of trends that would reasonably be considered by a buyer or seller as of that date. The appraiser should determine a logical cut-off because, at some point distant from the effective date, the subsequent data will not reflect the relevant market. This is a difficult determination to make. Studying the market conditions as of the date of the appraisal assists the appraiser in judging where he or she should make this cut-off. In the absence of evidence in the market that data subsequent to the effective date were consistent with and confirmed market expectations as of the effective date, the effective date should be used as the cut-off date for data considered by the appraiser.*

The appraiser cannot include in the analyses the fact that an event subsequent to the date of value in a retrospective appraisal changed the market conditions that existed as of the date of value. Using such information is not consistent with the purpose of the appraisal because buyers and sellers had no knowledge or expectation of that subsequent event as of the date of value.

However, an appraiser may disclose facts in an appraisal report about events that occurred subsequent to the date of value in an appraisal. Such a disclosure is particularly appropriate when the appraiser has reason to believe the intended users of the report could be misled by not knowing those facts in the current time frame, when the appraisal is being used.



**Practicing appraisers need to possess the year 2000 edition of USPAP and the current Utah statute and rules.**

Contact:

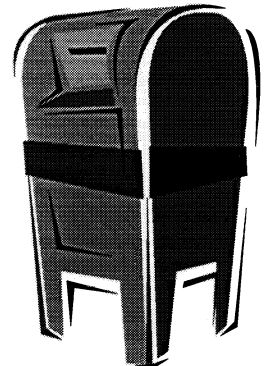
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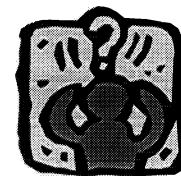
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## Ask the Reviewer

*continued from page 5*

to add sales as “filler” opposed to good, specific narrative, generally won’t stop an underwriter from coming back with questions in most cases. In other words, I don’t agree with “the more the better.” The client is looking for an appraisal, not the entire local MLS.

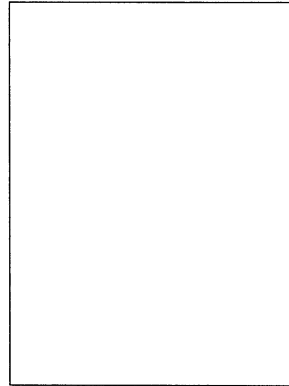
My advice? Look at the first three comparables. Are they dated, distant, or did they require large adjustments, particularly for consistent differences (the subject’s pool, acreage, GLA)? If so, then I would recommend looking for that fourth comparable that rounds out the differences, even if it exceeds guidelines in some other way. The time it takes to throw in that added value support will pay for itself through reduced phone calls, especially when dealing with national lenders, who are usually very unfamiliar with the subject’s market.

For residential appraising, I can’t see any real reason why something as extreme as six comparables would be needed, except when dealing with extremely remote or very unique properties, although I can say that I have worked with underwriters that keep looking for the sale that is a perfect match. Sometimes they simply don’t take no for an answer, and if you know you’re dealing with this type of client up front, providing some extra data may not be a bad idea. Remember, they don’t want to hold the loan up any more than you enjoy providing more sales. Communication is the key factor in making this decision, understanding what your client expects in terms of minimum reporting, and working to meet those requirements, reducing client requests, and improving the cost effectiveness of your business.

You’ve indicated that you’ve rarely received requests for additional comparables, so this indicates to me that you are doing the job correctly, explaining the neighborhood, and supporting the value conclusion in a way that is acceptable to your client without providing more data than needed.

*Reprinted with permission from Appraiser Update, National Association of REALTORS, June 2000 issue, p. 7*

## New Appraiser Board Member Appointed



Governor Michael O. Leavitt has recently appointed Joseph Stott, of Richfield, as the newest member of the Appraiser Licensing and Certification Board.

Joseph Stott has been involved in the estate industry since 1975. He is an SRA in the Appraisal Institute, a Certified General Appraiser, and has a Real Estate

Broker’s License. He has served as a Board Member of the Southern Utah Chapter of the Appraisal Institute. As a Real Estate Broker, Joe was a charter member of the Central Utah Board of Realtors, serving as First Vice President and Secretary.

Joe has also served in the community as a member and chairman of the Richfield City Planning and Zoning Commission. He is currently a board member on the Tri-County Health Foundation. He has been a Scoutmaster, Committee Chairman, and Advancement Chairman in the Boy Scouts of America.

### Did You Know?

Administrative Rule R162-106-6 defines what a “true copy” is. This rule states: “The true copy of an appraisal report which an appraiser is required by Section 61-2b-34(1) to retain shall be a photocopy, or other exact copy of the report as it was provided to the client, including the appraiser’s signature.”

The important thing to remember is that the work file should always contain copies of the final reports *that bear the appraiser’s signature.*

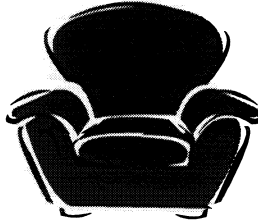
## From the Chair

*This article is taken, in part, from the Florida Appraisal Report by Dennis E. Basile, Chair of the Florida Real Estate Appraisal Board. Its timeliness was thought to be important for our Utah appraisers.*

Although we have seen many changes in the regulations and in the Appraisal Standards, it seems we always keep coming back to the question of "What can I do when a client asks if a property will reach a certain value before an appraisal is completed?" The client request can be asked in a variety of ways:

1. "If the property will not appraise for at least \$50,000, stop and call us immediately."
2. "The value needed is \$50,000."
3. "Please call and notify us if it is not possible to support the value at or above \$50,000 before you proceed."
4. "We need to do a 'pencil search' before we order an appraisal."

These kinds of statements have been made by prospective clients since the first appraisal was made and, of course, continue today. Under today's standards, the appraiser must be very careful in the way that he responds to requests similar to those above. Appraisers receiving requests for similar services should carefully review the following sections of the Uniform Standards of Professional Appraisal Practice (USPAP): the Conduct and Management sections of the Ethics Rule; the definition of an Appraisal, Appraisal Practice, and Appraisal



Assignment, and; Standards Rule 1-1(b); Standards Rule 1-2(f), (g), and (h); Standards Rule 1-5(a) and (b); the Departure Rule; Statement on Appraisal Standards No. 7; and Advisory Opinions 11, 12, 13 and 15.

The Appraisal Standards Board (ASB) has released Advisory Opinion 19 that specifically discusses what is considered an unacceptable assignment condition in a real property appraisal assignment.

The basics of any analysis of an Assignment Condition usually involves the analysis of the condition in relationship to both the Conduct section and the Management section of the Ethics Rule in the USPAP.

The Conduct section of the Ethics Rules states: *"An appraiser must perform assignments ethically and competently in accordance with the Standards, and must not engage in criminal conduct. An appraiser must perform assignments with impartiality, objectivity, and independence and without accommodation of personal interests."*

*An appraiser must not accept assignments that include the reporting of predetermined opinions and conclusions."*

The Management section of the Ethics Rule states: *"Whenever an appraiser develops an opinion of value, it is unethical for*

*the appraiser to accept compensation in developing that opinion when it is contingent upon:*

1. *The reporting of a predetermined value, or*
2. *A direction in value that favors the cause of the client, or*
3. *The amount of the value opinion, or*
4. *The attainment of the stipulated results, or*
5. *The occurrence of the subsequent event directly related to the value opinion."*

As in most things in life, we all tend to know that what we're doing or being asked to do is either right, wrong, or on the edge. We all make decisions on a daily basis and most of us usually make the decision to conduct our business and our lives in an ethical and honest way. For those of you that are either new to the business or are unfamiliar with the proper way to ethically perform an appraisal, there are the Uniform Standards of Professional Appraisal Practice that can be utilized for guidance. For those of you that decide to conduct your business in an unethical and dishonest way, we'll be sure to save you a seat at our next disciplinary administrative hearing.

*Reprinted from the Florida Appraisal Report, Vol. 9 No. 2, Summer 2000*

### *In Memoriam*

The Division of Real Estate expresses condolences to the family of Douglas E. Larsen, a Utah Certified Residential appraiser who passed away recently.

## Disciplinary Sanctions



GROVES, NATHAN, State-Certified Residential Appraiser, Salt Lake City. Consented to pay a \$2,000.00 fine, complete remedial education, and serve a one-year probation of certification, based on complaints filed against him alleging various violations of USPAP. #AP20-05-09, AP99-06-31, AP99-12-12, and AP99-08-06.

RUSSO, CHRISTOPHER, fka CHRISTOPHER FEENEY, State-Registered Appraiser, Elko, NV. Renewal denied effective September 14, 2000, based on failure to meet the licensing criteria of competency, honesty, and integrity. The Board determined that Mr. Russo does not possess a fundamental understanding of appraisal principles, and that he made misrepresentations in appraisal reports.

TROTIER, TRACY G., State-Certified Residential Appraiser, West Jordan. Application for renewal denied effective August 8, 2000, based on multiple violations of USPAP, knowingly made at the time of the violations.

### LICENSING STATISTICS

<u>1999</u>	<u>RA</u>	<u>LA</u>	<u>CR</u>	<u>CG</u>	<u>Total</u>
June	1326	18	481	336	2161
July	1307	8	481	331	2127
August	1263	11	471	331	2127
September	1232	11	474	318	2035
October	1222	11	474	317	2024
November	1202	11	476	313	2002
December	1177	12	480	316	1985
<u>2000</u>					
January	1152	13	480	317	1962
February	1118	13	481	319	1931
March	1083	14	483	324	1904
April	1067	14	481	324	1886
May	1012	15	486	326	1839
June	974	16	485	328	1803
July	947	15	492	327	1781
August	894	17	489	327	1727
September	859	17	490	324	1690
October	826	18	490	321	1655

## AQB Proposes Changes in Mandatory USPAP Continuing Education Requirement

The Appraiser Qualifications Board (AQB) recently announced they are considering substantial changes in the requirements for USPAP education. The changes would specifically mandate seven hours of USPAP education that would be required during each two year period and to require an examination for each USPAP course.

Continuing education requirements vary widely from state to state. The current AQB guidance is not definitive. It reads, "The Appraiser Qualifications Board strongly recommends that states consider requiring appraisers to enroll periodically in course work relative to the Uniform Standards of Professional Appraisal Practice." These instructions have led to significant diversity among the states in the area of USPAP continuing education requirements. As a result, appraisers licensed in several states have a great deal of difficulty meeting the various requirements.

The AQB is giving consideration to revising the Criteria to require a specific amount of periodic USPAP continuing education for licensed and certified appraisers. For instance, the criteria could be amended to require, at a minimum, seven hours of USPAP instruction (including successful completion of an examination) every two years.

The USPAP course content varies between states. There are no established minimum criteria for USPAP course content. The current lack of USPAP course content topic guidelines needs to be addressed by AQB! This would lead to uniformity in USPAP education.

The AQB is exposing proposed revisions to the Real Property Appraiser Qualifications Criteria that would mandate that the classroom hours relating to USPAP for qualifying education must be the 15-hour National USPAP



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## HUD Issues Mortgagee Letter on Physical Inspections

Mortgagees are no longer required to conduct physical inspections using Form HUD-9822 on properties in their HUD-insured multifamily portfolio, according to HUD Mortgagee Letter 00-18. According to the letter, the Department is in the process of implementing new procedures for insured multifamily mortgagees to conduct physical inspections on all HUD-insured mortgages in their portfolio. The soon-to-be-introduced new procedures will replace Form HUD-9822 and will implement the inspection process currently being utilized by the Department's Real Estate Assessment Center (REAC). Until the new

procedures are introduced, lenders should refrain from using the HUD-9822.

A new Physical Inspection Summary Report (version 2.3) is now available. This document details the objectives of the Inspection Summary Report and provides the definition for each field in the report. To access the report, visit [http://www.hud.gov/reac/products/pass/pass\\_isrpt.html](http://www.hud.gov/reac/products/pass/pass_isrpt.html).

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